

## REMARKS

Claims 1-38 have been cancelled, and new claims 39-58 have been added. Thus, Claims 39-58 are pending in the application. Reconsideration of this application in view of the above amendments and the remarks below is respectfully requested.

### I. ISSUES RELATING TO PRIOR ART

#### A. CLAIMS 39, 57, 58—BALASUBRAMANIAN

Claims 1-4, 7-16, 18-24, 27-32 and 35-38 were rejected under 35 U.S.C. § 103 as allegedly unpatentable over Balasubramanian et al. (US Patent 6,874,099) in view of Fu et al. (US Patent 6,970,873) (Office Action, page 2). The rejection is respectfully traversed.

New claims 39-58 reflect the general subject matter of the original claims but are presented to provide better clarity and an accurate statement of what is considered to be the invention. Claims 39, 57, and 58 are independent. Support for the new claims is found at least in paragraphs 0016, 0017, 0038, 0044, 0062, and FIG. 4B. No new matter is introduced.

Claim 39 recites “maintaining and updating a plurality of queries”. Claims 57 and 58 recite similar subject matter. The Office Action mailed October 27, 2008 continues to identify Balasubramanian’s test signals as corresponding to the claimed queries. Applicant respectfully disagrees. Balasubramanian’s test signals are not described as being maintained, updated, or any equivalent. Balasubramanian’s test *results* arising *from* the test signals are described as being stored in a database 160 and a log file 170 (col. 6, lines 5-7), but the test signals themselves are never described as being maintained and updated in any context. Moreover, in claim 39, the network management system maintains and updates the queries; there is no network management system in Balasubramanian that maintains or updates test signals.

Applicant recognizes that the USPTO applies a “broadest reasonable interpretation” to the claims and the references in assessing patentability. However, the Court of Appeals for the Federal Circuit recently emphasized that the Office may not ignore the specification, stating that “claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Wheeler*, No. 08-1215 (Fed. Cir. 2008) (slip op. at 3) (citing *In re*

*Bond*, 910 F.2d 831, 833). In the present case, a person of ordinary skill in the art would not interpret the claim term “queries” as equivalent to “test signals,” based on applicant’s specification. For at least this reason, Balasubramanian cannot support a rejection for unpatentability.

Claim 39 also recites “the network management system automatically, without user intervention, detecting modifications to the network”, and “the network management system automatically, without user intervention, modifying the queries to match the modifications to the network”. This feature is not found in Balasubramanian. Instead, Balasubramanian’s test signals are only changed when a user adds, changes, starts, stops, or updates a monitoring program. All of these changes are described within Balasubramanian as occurring with user intervention. Balasubramanian has no capacity to automatically modify test signals in response to network changes.

Claim 39 also recites performing the selected queries on one or more of the network devices, receiving responses to the selected queries and automatically evaluating the responses to formulate corrective actions, where the corrective actions cause “automatically repairing failures of one or more of the network devices”. Balasubramanian’s Integrated Monitoring System (IMS) product locates breakdowns in the network, and potentially sends notifications of these breakdowns, but does not “automatically repair failures” as claimed. Instead, Balasubramanian sends notifications that may contain suggestions on types of repairs to perform. However, Balasubramanian never actually performs any of these repairs. Claims 53-56 recite examples of specific repairs. None of these repairs are suggested in Balasubramanian.

Fu does not cure the deficiencies of Balasubramanian with respect to the distinguishing features identified above. Thus, the combination of references, and the references individually, lack multiple features of the claims and therefore the Office action fails to state a *prima facie* case of unpatentability. For all these reasons, the claims are allowable over the references in combination.

The “Response to Arguments” section of the Office Action (pages 8-11) contends that “in Balasubramanian, sending notifications (column 4, lines 52-54 and column 6, lines 15-40) is equivalent to the “claimed formulate corrective actions”. This is incorrect. Present Claim 39 recites that “the corrective actions cause **automatically repairing failures** of one or more of the network devices”. This feature is not suggested by Balasubramanian’s sending notifications of problems. The notifications may alert someone that a problem exists, but as stated, Balasubramanian does not disclose performing a repair. For at least this reason, Balasubramanian does not teach or suggest the subject matter of the independent claims.

The “Response to Arguments” further states:

“...processing queries through the monitoring programs is the central objective of Balasubramanian (column 2, lines 43-64). In other words, each monitoring program sends queries to applications, and waits for responses. Queries are internal and specific to the monitoring programs. Thus, the monitoring programs control the queries. Balasubramanian discloses “the admin GUI 110, by means of communication channel 210, allows **a user** to start or stop the monitoring of all processes of all types, all processes of a particular type, or a particular process of a particular type” (column 5, lines 21-24). In this context, process refers to the monitored application. As already discussed, each monitoring program controls queries. Thus, **when a user makes selections** of which processes to be monitored through the Admin GUI, queries are automatically modified.”

(Emphasis added.) However, present Claim 39 also recites “automatically, without user intervention, detecting modifications to the network and automatically, without user intervention, modifying the queries to match the modifications”. This feature is not suggested within Balasubramanian; in the reference, the monitoring programs that control the test signals are always stopped and started by a user. For at least this reason, Balasubramanian does not suggest the claimed feature in which network modifications are detected and queries are modified “without user intervention”.

The Office Action further states that “Examiner agrees that a user adds and updates the monitoring programs, but the monitoring programs are not queries. ... The monitoring programs control the queries. ... When a monitoring program is added or changed [by a user] for a new or changed device, then the queries, as a whole, automatically change.” However, while it is true that Balasubramanian’s monitoring programs are added and changed by users only, Balasubramanian does not disclose any embodiment in which adding or changing monitoring programs occurs automatically. Thus, it is not possible for Balasubramanian to suggest “automatically, without user intervention, modifying the queries to match the modifications”, as claimed.

For at least the above reasons, present Claims 39-58 are patentable over a combination of Balasubramanian and Fu. Reconsideration is respectfully requested.

#### B. REMAINING CLAIMS

All remaining Claims were rejected under 35 U.S.C. § 103 as allegedly obvious over a variety of references using Balasubramanian as a base reference. However, all of these Claims either explicitly recite or depend from other Claims which recite elements or steps which as shown above are neither disclosed nor suggested by any combination of prior art, either by Balasubramanian or by any other reference. The secondary references do not cure this deficiency of Balasubramanian, and therefore any combination of Balasubramanian with any of the secondary references cannot provide the complete combination of features recited in the remaining claims.

#### II. CONCLUSION

For the reasons set forth above, all of the pending claims are now in condition for allowance. The Examiner is respectfully requested to contact the undersigned by e-mail or telephone relating to any issue that would advance examination of the present application. As per MPEP Chapter 5, Applicant acknowledges that Internet communications may not be secure.

If any applicable fee is missing or insufficient, throughout the pendency of this

application, the Commissioner is hereby authorized to charge any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,

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